

Research article

The original political legitimacy of the Ethiopian ethnic federal system: from the perspective of multiparty deliberative constitution-making

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Abstract: *This article deals with the political legitimacy of the ethnic federal system of Ethiopia in terms of multiparty federal constitutional designing. It applies the research design of a qualitative interpretive case study which uses theoretical perspectives and empirical data without undermining the contextual particularities of the case under investigation. Theoretical elaborations in conjunction with the annals of constitution-making across mature, fragile, and defunct multi-ethnic and multi-national federations are the literature review aspects of the article. They underline the conceptual and empirical frameworks of the study that multiparty constitution-making is of paramount significance to the foundational original legitimacy of federal systems. Based on that, the article has employed predominantly qualitative data, primary and secondary, and information from the literature and public and official documents related to the making of the Ethiopian Federal Constitution. It is found that the dominance of EPRDF (Ethiopian Peoples' Revolutionary Democracy) in the designing of the 1994 Federal Constitution was hardly aligned with multiparty federal constitutional designing. As a result, the ethnic federal system has been*

challenged for two reasons. First, it is a top-down and exclusive constitutional imposition by primarily EPRDF and its allies, which were less popular, newly organized, and urban-based minor ethnic parties. Relatively popular ethnic and cross-ethnic opposition parties did not take part in the writing ventures of the federal constitutional dispensation. The other reason is a substantive one that the Marxist-Leninist derivatives of EPRDF's revolutionary-democracy envisaged the relegation of, among others, the liberal values of individual rights and democratic citizenship into the ethnic structure of self-determination. That, exemplified by the defunct communist federations, raises questions about the ideological legitimacy of the EPRDF-backed federal order. As a remark, inclusive, open and genuine constitutional dialogues and bargains could redeem the contested origin of the ethnic federal system. That goes in tandem with the democratization process of Ethiopia, which is still controversial.

Keywords: Constitution-making, Ethiopia, ethnic federalism, multiparty deliberation, political legitimacy

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1. Introduction

Ethiopia is one of the third generations of federations that proliferated in the closing periods of the Cold War and its aftermath. The origin of the ethnic federal system of the Ethiopian Federal Constitution, adopted in late 1994 and effected in mid-1995, has the resonance of recasting the making of the modern Ethiopia state since the second half of the 19th century and the underlying nation-building with the rights of self-determining ethnic

groups federated into one economic and political community. The growing identity-based political contentions set the stage for the eminence of ethnonational political movements tethered with the question of nationality since the early 1960s (Bahru, 2014). In the subsequent years, unlike the momentous politics of national solidarity and modernization auspice in a hegemonic central power in the majority of the newly independent African states, ethno-nationalism was rippling across the political horizon of Ethiopia, which was increasingly arched to the leftist ideological orientations of the newly emerging political class.

As a response, therefore, with the end of the Derge regime, the ethnic federal system is said to be the only choice left for the continuity of the Ethiopian state in a just order. It ensures the right of self-determination to ethnic groups in such a way that its constitutional reading reflects some aberrations from the classifications of federal formations into 'holding-together', 'coming-together', and 'putting together' (Stepan, 2001; 1999). If the holding-together strand of federal formation is tested strictly, it is implied in the opening of the FDRE Constitution (Preamble), "by continuing to live with our rich and proud cultural legacies...rectifying historically unjust relationships". Nevertheless, it is also easy to grasp that the Constitution, in its Preamble, attributes the federation as a coming-together derived from the free will of "nation, nationalities and peoples" aiming to establish one economic and political community. Here, by definition, these groups had *a priori* autonomy and they partly relinquished that to enter into the federation.

Moreover, the autonomy of the ethnic groups is taken as the basis for the continuation of the federation in such a way that they have the unconditional right to invoke the constitutional right of external self-determination (FDRE Constitution, 1994, Art. 39). For that reason, the constitutional predisposition of independence and, again, the right to leave the federation constitute, theoretically, a treaty-based federal system that is usually reflected in the structural design of a 'coming-together federal system' (Elazar, 1987; Maimire, 2003). Yet, there are views that the fact that Ethiopia predates the ethnic federal system renders the 'coming-together federal system' argument chimerical because of its revolutionary re-interpretation of history along the radical Marxist politics of EPRDF, as far as the ethnic federalism is concerned. The 'putting-together' federal formation of extensive constitutional power devolution under a strong centre is more valid to the EPRDF-dominated federalization of Ethiopia (Assefa, 2008). Anyways, the expansive and weighty constitutional rights of the *sovereign* ethnic groups have been acclaimed as the dialectical method of achieving national unity and stability, via peoples' will.

On the political legitimacy of the ethnic federal system in point, however, there are wide rifts among political actors and scholars. In addition to negating the sovereignty of Ethiopia, the federal system vitiates the unity and the peaceful co-existence of ethnic groups at the perils of ethnic conflicts and political instability is the

centrepiece of its critiques. They attributed that to the condition of multiparty deliberation in the making process of the Federal Constitution.

There are perspectives on the relevance of multiparty constitutional writings to the political legitimacy of multi-ethnic and multi-national federal systems. They are discernible in the experiences of failed and mature pluralistic federations. Belgium, Canada and Switzerland are examples of mature federations which have multiparty federal constitutional origins (Gagnon & Tully, 2001). That is quite different from the track records of constitutional impositions in defunct multi-ethnic/multi-national federations such as Yugoslavia, Czechoslovakia, USSR and to some degree the colonial federal legacy of Malaysia. The federal constitutions of these federations were the by-products of the top-down, exclusive and monolithic political choices of the hegemonic communist parties (Kavalski & Zolkos, 2008). For the monopoly of constitutional re/makings by political actors having sectional interests and ideological particularism, the federal constitutions of the defunct federations had fragile founding political legitimacy, *original legitimacy*, and politicized substances. In terms of "who owns them" and what values they served, the federal constitutions of the communist federations were identified with the ruling communist parties and the ideology of communism. They had limited opportunities to accommodate and survive global, regional, and domestic ideological reordering unfolding with the end of the Cold War, in general, and the leadership fractures and gaps of the ruling communist parties, in particular. In the same vein, as the article indicates later, one-party dictatorships and their semblances are barely compatible with the degree of institutional and political pluralism which is necessary to the original legitimacy of a federal system aiming at the constitutional accommodation of ethnic groups with deep political cleavages.

Focusing on the Ethiopian case, thus, the texture of multiparty deliberation in the making of the Federal Constitution has indispensable meanings on the political legitimacy of the federal system. Presumably, the opening of multiparty politics at the end of the Derge regime was an important step to bring about political consensus to the coming federal constitutional design. Ottaway (1995) claimed that despite the violent political change in 1991, like the socialist direction of the 1974 Revolution, which led to a power vacuum and "democratization from the top", it ushered in the legality of political parties to openly organize and compete each other. The crux of the matter is how it could be reliable to think of multiparty deliberation in the federalizing or federative¹, process against the backdrops of EPRDF's dominance in the transitional task of constitution-writing.

¹ Andreas (2003) prefers the term *federative* to *federalizing* to underline the precepts of coming-together federalism from the a priori autonomy and sovereignty of nations, nationalities and peoples.

Therefore, the problem of the study is the condition of multiparty deliberation in the writing process of the Federal Constitution of Ethiopia and its implications for the political legitimacy of the ethnic federal system. It raises questions on the nature of multiparty power balance in the institutional and political matrix of the transnational period and their meanings on the legitimacy of the ethnic federal constitutional order, in both procedural and substantive senses of original constitutional legitimacy. Addressing these questions contributes to the study of the Ethiopian federalism in two ways.

First, it helps fill the gap in the integrated analyses of the technical and ideological foundational legitimacy of the Ethiopian ethnic federal system. Most of the relevant literature is focused only on the constitutional text of the federal system and its operation. In fact, in some cases such as Yonatan (2018), Teguadda (2011), and Tsegaye (2010), the historical base and the political purpose of the ethnic federal formula are the topics of research, but they are limited to connecting the making background and the trajectories of the federal constitutional dispensation. Second, the article has brought to light the interactions between multiparty democracy and the legitimacy of the Ethiopian federal constitutional system. It resonates with the view that the issue of democratization is both the cause and the solution for the contentious political legitimacy of the ethnic federal organization. It is a decent academic contribution emphasizing the multiparty democratic prerequisite of federalism in such a one-party dominated ethnic federation as Ethiopia.

In terms of structure, it has four main intertwined parts. The first part elaborates on the experiences of failed, fragile and mature multi-ethnic and multi-national federal systems and draws on the necessary analytical frameworks. Results and discussion regarding the texture of multiparty deliberation in the designing, adoption, and ratification stages and procedures of the Federal Constitution are the subjects of the second part. The findings and conclusion of the study come under the third and fourth parts of the article, in their orders.

2. Conceptual and Empirical Frameworks

Constitution-making is the combination of political and legal processes involving the complex environment of constitutional crafting, choices and negotiations involving political actors, legal experts and public participation (Hart, 2010). Arato cited in Jackson (2008) argued that multiparty constitution-making is not compatible with constitutional impositions but requires “a plurality of democratic channels, consensus empirical translations of a veil of ignorance”. In the context of multi-ethnic and multi-national federal constitutional designing the representation of segmental as well as cross-ethnic, religious and linguistic political parties highly facilitate their deliberation towards designing a negotiated federal constitution which is mutually advantageous to the competing interests of identity groups. It is an important ingredient in the *original legitimacy* of a pluralistic federal system to accommodate and endure political changes and crises ahead. That attests to the durability of mature multi-ethnic and multi-national federations such as Switzerland, Canada, and Belgium.

In the making of the 1848 Swiss Constitution, there were about five political parties in the National Council, including the radical left, liberals, catholic and evangelical right groups (Swiss Electoral Resource, 2019). In the case of Canada, before the 1867 Federal Act, the 1863 electoral result brought liberals, conservatives and reformists into the House of the Commons to deliberate on the federal proposal in the Province of Canada, 2018). Belgium had already a matured multiparty system before the formal constitutional adoption of the federal system, in 1993, the Chamber of Representatives that adopted the Federal Constitution had not less than 12 parties (Inter-Parliamentary Union: Belgium, House of Representatives, 2018). Finally, despite the dominance of the India National Congress (INC), the three-year constitutional designing process saw some other political parties in the Constituent Assembly, an organ mandated to establish and monitor the Constitutional Drafting Commission. Of the 316 seats in the Assembly, INC secured 208 and the remaining seats were distributed among the All-India Muslim League (AIML), 72, and other parties (Telford, 1999).

Furthermore, the multiparty democracy channels the interests of ethnic minorities into constitutional-making ventures and fosters the founding legitimacy of a multi-ethnic federal system. It was witnessed in the recent federal experience of Spain and the evolving federalizing process of Canada. In the first post-Franco election in 1977, the election of ethnic minority parties from Basque and Catalonia enabled inclusive federal houses that could establish a "...36-member Constitutional Affairs Commission and a seven-member working group to draft a constitution...known as the Fathers of the Constitution and were chosen to represent the wide and deeply divided political spectrum within the Spanish Parliament," according to Urra (2014). Since they have to freely and openly convince others to be competitive in an open political setting, the organizational functioning and the programmatic articulation of minority parties enable them to engage in constitutional deliberations with factual claims. Jackson (2008) said that not paying attention to the oppositions of minority groups challenges the legitimacy of the Canadian Charter of Rights and Freedoms of 1982 to be "a binding instrument".

Contrary to the above cases of federations, the colonial federal legacy of Malaysia, the communist federations of USSR, Yugoslavia, and Czechoslovakia were, according to Kavalski and Zolkos (2008), the results of federal constitutional imposition by foreign powers and dominant parties of having centralized leadership structures and ideological stringencies. With the ideological pre-commitment of the *vanguard parties* of the defunct communist federations, the purported democratic essence of the right of nationalities to self-determination was practically ineffective. Tsegaye (2010) argues that "it is important to note that if the process is flawed; the content is hardly looked into, 'the baby is thrown with the bathwater'". The 1936 and 1977 constitutions of the Soviet Union were, following the study of Blount, Elkins and Ginsburg (2009), purely premeditated by the communist parties' view of industrial modernization in such a way that questioned the commitments of the parties to adhere to the very Marxist-Leninist version of the right to self-determination they

adopted into the constitutions. Hence, the communist federal systems were too politicized with the ideological and organizational dynamics of the communist parties to outlast the end of the Cold War. That happened in East Timor that "... a single political party dominated the constitution making... When violence erupted a short time after the constitution's adoption, many key actors and groups called for the document to be replaced," Brandt and Gluck (2015).

In the doctrine of federalism, a constitutional imposition as witnessed from the failed federations of one-party regimes is antithetical to the never-ending deliberative attributes of federal constitutional legitimacy. Attesting to Elazar's (mentioned in Burgess, 2006) words of wisdom, "federalism is a continuing seminar in governance", the notion of agency in deliberative democracy enables parties to maintain the continuity of the covenantal precepts of federal legitimacy. It is assuring and re-assuring the "will to federate", regardless of the *organic* and *mechanical* backgrounds of federations, evolved from social and elite interactions, and agreed constitutional options, respectively (Fabre, 2009).

In General, Blount, Elkins and Ginsburg (2009) observed that democratic constitutional designing "can help generate democratic outcomes." In setting off constitutional impositions, multiparty constitution-making generates the constitutional consensus and durability of multi-ethnic and multi-national federal systems. Claiming consensus is the major aim of constitution-making. Brandt and Gluck (2015) pointed out, "... constitutional negotiators in South Africa used the concept of sufficient consensus; in practice, and this meant support from the two main parties and a critical mass of the smaller parties." The durability comes from the advantage of multiparty balanced constitutional arguments in limiting the identification of constitutions with the ideology and specific interest of a dominant group in the period of writing them. The theoretical and practical legitimacy of highly politicized constitutions is too contentious to be the living document of generations. Jackson (2008) argued, "...constitutions negotiated by elite representatives of groups whether in a special assembly or convention or a representative parliamentary body may prove sufficiently durable to move towards constitutionalism" even to the extent of without the additional criterion of public ratifications. It has multipronged relevance to the legitimacy discourse of the Ethiopian ethnic federal choice.

3. Results and Discussion

Several scholarly contributions have debated and put points of reservation on the political legitimacy of the ethnic federal choice of Ethiopia. Despite the 1994 Federal Constitution being acclaimed for its political maturity and historical resoluteness to directly address the nationality question, Brietzke (1995) suspected the farsightedness of its drafters for they had no control over the effects of their constitutional choice that aligned federalism with ethnic self-determination to arrive at his conclusion. Ethiopia seems poised for [a] bigger constitutional leap into a murkier realm, into an ethicized attempt at democratization. I will argue that there are

grounds for a guarded optimism over Ethiopia." Such understanding suggests the importance of looking into the legitimacy of the ethnic federal design.

The constitution-making moments of Ethiopia in the first half of the 1990s marked a major shift of power relations precipitated by the combination of political and armed conflicts. Immediately, about one month into the end of the Marxist regime of the People's Democratic Republic of Ethiopia (PDRE), the armed victorious groups, EPRDF, proclaimed a national assembly named Peace and Democracy Conference (July 1-5, 1991). This assembly promulgated the Transitional Charter that served as an interregnum document that, for Brietzke (1995), "forecasted" the features and the making stages of the Federal Constitution. Because of that, it is logical to consider the place of multiparty deliberation starting from the Peace and Democracy Conference to the ratification of the forthcoming constitution.

The Peace and Democracy Conference needed to embody the necessary political pluralism to the political transition of the country into a democratic multi-ethnic federal constitutional order. Specifically, the inclusive representation of various political parties and their equal participation in drawing the contour of the transitional process magnified the purpose of the Conference in setting the stage for a deliberative federal constitutional choice. It was a fact that 19 political parties had seats in the Conference (below Table 1). Ottaway (1995) traced the information that EPRDF (TPLF, OPDO, ANDM and EDOU), OLF and 20 other small parties participated in the Conference.² Five multi-ethnic and -national parties and 14 ethnic parties had had the status of participation and four of them had the role of observation (below Table 1). At face value, that could be applauded for sowing the seed of political pluralism in the promise of democracy. The quantitative confirmation of multiparty politics in the Conference is misleading.

Table 1: The Composition of the Peace and Democracy Conference (July 1-5 1991)

Party Participants of the Conference³	Non-party Participants of the Conference (Social groups, Ethnic Groups, and Individual Figures)	Observers of the Conference
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² Ottaway (1995) might add the three entities, excluding EPLF, with the observer status- Independent Committee for a Peaceful Democratic Transition in Ethiopia, Alliance for Democratic Council Committee (ADOC) and All Ethiopian Islamic Democratic Movement (AEIDM).

³ ALF (Afar Liberation Front), ADCC (Alliance for Democratic Council Committee), AEIDM (All Ethiopian Islamic Democratic Movement), ANDM (Amhara National Democratic Movement), BPLM (Benishangul People's Liberation Movement), EDAG (Ethiopian Democratic Alliance Group), EDC (Ethiopian Democratic Coalition), EDOU (Ethiopian Democratic Officers Union), EDU (Ethiopian Democratic Union), ENDO (Ethiopian National Democratic Organization), EPLF (Eritrean People's Liberation Front), EPRDF (Ethiopian Peoples' Revolutionary Democratic Front), GPDF (Gurage People's Democratic Front), GPLM (Gambella People's Liberation Movement), HAF (Horn of Africa Forum), HNDO (Hadiya National Democratic Organization), IFLO (Islamic Front for the Liberation of Oromo), IGLF (Isa and Gurgora Liberation Front), OALF (Oromo Abo Liberation Front), OLF (Oromo Liberation Front), OPDO (Oromo People's Democratic Organization), OPLF (Oromo People's Liberation Front), SPLM (Sidama People's Liberation Movement), TPLF (Tigray People's Liberation Front), WPDF (Wolayita People's Democratic Front), and WSLF (Western Somali Liberation Front)

1	ALF	1	Addis Ababa University	1	ADCC
2	BPLM	2	Hadere	2	Addis Ababa University
3	EDAG	3	Kambata	3	AEIDM
4	EDC	4	Omotic Peoples	4	EDU
5	EDU	5	Trade Unions	5	ENDO
6	ENDO			6	EPLF ⁴
7	EPRDF, (consisted of ANDM, EDOU, OPDO and TPLF)			7	Ethiopian Catholic Church
8	GPDF			8	Ethiopian Orthodox Church
9	GPLM			9	GPDF
10	HNDO			10	HAF
11	Horiyale			11	Independent Committee for a Peaceful Democratic transition in Ethiopia
12	IFLO			12	Islamic Elders
13	IGLF				Mekane-Eyeseus Church
14	OALF				
15	OLF				
16	OPLF				
17	SPLM				
18	WPDF				
19	WSLF				

Source: Data derived from the archives of NEBE

The expectation of a multiparty transitional opening from the Peace and Democracy Conference was unfulfilled. Teguadda (2011) states that EPRDF had the upper hand to decide on the allocation of the seats of the Conference, which were 85 without counting the additional four vacant seats reserved for parties; and to control the inclusion and exclusion of parties which applied to attend the Conference. Lyons (1996) believed that “EPRDF convened a National Conference to which it invited representatives from over 20 political movements. Some of these were small ethnic parties, newly organized under EPRDF tutelage, led by urban elites with weak ties to the countryside.” This is a showcase that the front, EPRDF, was not only consolidating its position further but also manipulated the inclusiveness of the Conference by screening the inclusion of other parties (Kassahun, 1995).

Consequently, the democratic currency of the Peace and Democracy Conference was jeopardized in terms of establishing legitimacy to the adoption of the Transitional Charter, as the predecessor to the Federal Constitution. Teguadda (2011) stated, “[t]he Conference which EPRDF unilaterally determined the right to political participation of the Ethiopian people... where all other participants acted as guests.” That goes to the extent of eschewing the potential role of the Conference to realize the purposes of inclusive political dialogues in the making of the Transitional Charter. Alemante (1992) and Lyons (1996) argue that the Transitional Charter was already pre-fixed by EPRDF, with some engagement from OLF’s side, before the inauguration of the Conference. Ottaway (1995) wrote that “[t]he so-called process of democratization started in the absence of

⁴ Also qualified to participate in the discussion of the Conference on issues relevant to Eritrea

any real contending power to that of the dominant group." That indicates the heavy influence of EPRDF on the essence and the designing mechanisms of the Federal Constitution.

The Transitional Charter, under Part 4, gave the powers of drafting and ratifying the new constitution to the Constitutional Drafting Commission and the Constituent Assembly, in their order. Articles 10 and 11, expressed that CoRs, equivalent to the legislative organ of the Transitional Government, had the mandate to establish the Commission and to adopt the draft version of the constitution, written by the same Commission, before reaching public discussion. Thus, to continue the task of examining the condition of multiparty deliberation in the process of writing the Federal Constitution, the following three points are critical.

The first is the multiparty features of the Constitutional Commission and the CoRs. In August 1992, CoRs ordained Proclamation No. 24/1992 to form the Commission by pointing out its specific powers and responsibilities related to constitutional drafting, public awareness and public participation (Art. 5). Its membership size and composition were identified in the Proclamation (Art. 7) that 29 individuals were to constitute the Commission and to organize themselves into General Assembly, Executive Committee and other committees. It is worth mentioning that 14 of the 29 members of the Constitutional Drafting Commission were from 14 political parties, seven from those parties within the CoRs and the other seven from outside the CoRs (Ibid, Art. 2), whereas the remaining 15 were from professional associations and interest groups.⁵ In terms of representativeness, Kifle Wodajo, the Chairperson of the Commission, said that the inclusion of parties and interest groups outside CoRs was imperative to compensate for the representativeness gap of CoRs (mentioned in Tegudda, 2011). Indicating such pieces of evidence of party inclusions in the Commission and the CoRs, since the parties attended the Peace and Democracy Conference were also included in the latter (Ottaway, 1995), and there are claims that the drafting and the adoption of the Federal Constitution allowed multiparty deliberation (Addisalem, 2003).

However, the Constitutional Drafting Commission and the CoRs were under the strong influence of EPRDF. The majority of the seats in CoRs, including chairing, were under EPRDF (Assefa, 2008). The combination of the victor's position of EPRDF, its number of representatives in the CoRs (36%), 32 of 87, and securing the alliance of others, notably the Oromo Liberation Front (OLF), which had the second most seats 12 (14%) until

⁵ Teachers' Association (2), Women Representatives (3), Health Professional Association (2), Trade Unions (3), Chamber of Commerce (3), and Lawyers Association (2). Parties from the Council of Representatives: Ethiopia Democratic Union (1), Ethiopian People's Democratic Movement (1), Ethiopian National Democratic Organization (1), Oromo People's Democratic Organization (1), Hararri National League (1), Keffa People's Democratic Unity Organization (1), and Isa and Gurgora Liberation Front (1). Parties from outside the Council of Representatives: Southern Ethiopia People's Union (1), Southern Ethiopian People's Democratic Front (1), Ethiopian National Unity Party (1), Forum 84 Organization (1), Ethiopian Islamic Movement (1), Moa-Anbessa (1), and Ethiopian Democratic Movement League (1). See Tegudda Alebeachew (2011, p. 60-61).

they withdrew from it in May 1992, wrote Birhanu (2007), was an openly enabling environment for EPRDF to sturdily enforce its constitutional choice. With EPRDF and its minor satellite parties, the CoRs adopted the draft version of the new constitution on May 3, 1994 drafted by the Constitutional Drafting Commission, also boycotted by opposition parties, as per the data of Brietzke (1995).

Secondly, regarding the essence and procedures of public constitutional discussions, debates point to the unbalanced roles of political parties in shaping the directions of the discussions and the views of the participants. This focuses on the manoeuvring tendency of the discussions to lead to justifying the federal constitutional design, including the much-contested topics such as the right to self-determination up to and including secession, then presenting alternative perspectives on constitutional democracy and constitutional systems. The Commission construed, claims Teguadda (2011), that “[t]he participants in all Regions had supported the right to secession”, though the Commission itself forwarded the issue to CoRs, for it had been divided over this right. Related to that, the public exchange of views on the draft of the constitution was under the supervision of local government structures that were being directed by EPRDF, because of the local and regional elections of June 1992.

The 1992 elections were boycotted by “major” five opposition parties and the turnout was too low (Brietzke, 1995).⁶ The causes for the withdrawal of the opposition were a combination of political disagreements and the repressive acts of the EPRDF. Doubts on the projection of the transitional process and whether it would lead to an extensive degree of constitutional self-determination for the Oromo was the main cause for the OLF's withdrawal from the elections and its dismissal from the CoRs (Cohen, 1995). Lyons (1996: 128) gave his account that on June 17, 1992 OLF declared its non-participation in the upcoming elections held on June 21 of the same year, after it, including 17 other parties, had petitioned to CoRs asking the postponement of the elections. Harassments and intimidations by EPRDF against opposition candidates, not limited to OLF, who would have run for the elections otherwise had provoked and exacerbated the electoral boycotting of the parties. The influences of EPRDF's militia on the members of opposition parties and the partiality of the institutions of the Transitional Government of Ethiopia (TGE) and the National Electoral Commission (NEC) were extensively reported (Ibid).

⁶ According to Brietzke (1995, p. 21); The opposition parties were: Agew People's Democratic Union, All Amhara People's Organization (AAPO), Coalition of Ethiopian Democratic Forces (COEDF), Council of Alternative Forces for Peace and Democracy (CAFPDE), Ethiopian Democratic Action Group, the Ethiopian Democratic Union Party (EDUP), Ethiopian Democratic Party-Medhin (EDP-Medhin), Ethiopian National Union Party (ENUP), Ethiopian People's Revolutionary Party (EPRP), Gurage People's Liberation Front (GPLF), Islamic Front for the Liberation of Oromo (IFLO), Oromo Liberation Front (OLF), Somali Liberation Front, and Southern Ethiopia People's Democratic Coalition (SEPDC). The last one, SEPDC, is also known simply as The Southern Democratic Coalition.

The result was, as described by Cohen (1995: 155), “an overwhelming election victory for the EPRDF and extensive criticism of the election process by external observers and opposition party spokesmen.” It meant 1,108 out of the 1,147 seats of the Councils of Regional Governments, according to Lyons (1996). That was degrading to the participation of political actors and citizens, outside EPRDF and its affiliates, in the constitutional discussions. Furthermore, only a small portion of the public, estimated between 5 and 30 per cent of the population, was part of the constitutional conferences and discussions, even though the Minutes of the Commission (cited by Teguadda, 2011) claimed that it was about 13 million citizens. Adding to the practice of informal pressures, as mentioned by Tsegaye (2010), in CoRs in the process of adopting the draft constitution, the deliberative feature of the constitution-making process was highly questionable.

Thirdly, in light of inter-party federal constitutional debates, the dominance of EPRDF and its influence on small parties with the parallel withdrawal of the relatively popular parties, in addition to OLF's withdrawal since 1992, such as the Southern Coalition and All Amhara People's Organization (AAPO) from the June 5 1994 election for the Constituent Assembly gave EPRDF an overwhelming position in the ratification phase of the new constitution (Brietzke, 1995). The dominance of the EPRDF in that election had been a work in progress, though some efforts were made by the opposition forces to readjust the terms and process of the transitional politics in general and the making of the new constitution, in particular. Lyons (1996) described the effects of the divided, weak and "irresponsible" oppositions to challenge, coerce and threaten using such mechanisms as forming coalitions, convening conferences in Paris and Addis Ababa, electoral withdrawal, and calling for mediation by the United States were “... no match for the EPRDF's intricate mechanisms of control”.

Eventually, on December 9, 1994, in session since October 3, the Assembly effortlessly ratified one of the two versions of the draft constitution, both unanimously adopted by the CoRs, which affirmed the right of self-determination for ethnic groups and the public ownership of land. The lack of multiparty competition for the election of the Constituent Assembly coupled with the First-Past-the-Post electoral system (Proclamation No. 64/1993) that was less likely to induce the necessary degree of representativeness for such a highly critical issue as adopting a constitution for a pluralistic society had enabled EPRDF to control the floor of the Assembly to steer the ratification of the Federal Constitution, without the participation of vocal opposition parties. In the words of An-Na'im (mentioned by Brietzke, 1995), the 1994 elections showed that “EPRDF has managed to exclude...those parties which carry real political weight, and sought to camouflage this by involving minor parties with little or no political support”. It had 464 (85 %) of the 547 seats in the Assembly (below Table 2), for Lyons (1996), it was 484 while Brietzke (1995) put that 487 (89 %). Moreover, the other face of the election was the rate of turnout, 13 million out of the estimated 23 million eligible voters, about 57 per cent, cast the votes (Lyons, 1996).

Table 2: Composition of the Constituent Assembly, 1994

Parties Represented under EPRDF		Seats in the Assembly	Other Parties and Independents		Seats in the Assembly
1	TPLF ⁷	37	1	ALF	6
2	ANDM	134	2	ANUO	1
3	OPDO	179	3	GPLM	2
4	APDO	2	4	BPLM	4
5	GPRDM	12	5	KNDM	1
6	HPDO	8	6	MPDM	1
7	KPDO	5	7	SAMWGPDM	3
8	TPDO	1	8	BPDO	1
9	APDO	2	9	SOPDO	7
10	YPDF	1	10	DPDO	1
11	KPRDO	6	11	MPRDO	2
12	BPRDO	2	12	HNL	1
13	SPDM	2	13	GDU	1
14	SPDO	19	14	ESDL	13
15	WPDO	13	15	WSDP	2
16	GPRDO	6	16	Independent	34
17	KPRDO	1			
18	GGPDO	13			
19	KPRDO	1			
20	DPDO	4			
21	GPLF	2			
22	EPRDF	13			
		Total Seats: 464			Total: 79
		Percentage: 85.5 %			Percentage: 14.5%

Source: The Archives of NEBE, 1994

Gradually, in the expression of Ottaway (1995), the whole process of democratization in the transition period was too formalistic and a “failure” that “the Ethiopian government was more narrowly based and had less legitimacy in 1994 than in 1991.” Lyons (1996) addressed that EPRDF’s military commanding power,

⁷ TPLF (Tigray People’s Liberation Front), ALF (Afar Liberation Front), ANDM (Amhara National Democratic Movement), ANUO (Argoba National Unity Organization), APDO (Afar People’s Democratic Organization), APDO (Alaba People’s Democratic Organization), BPDO (Burji People’s Democratic Organization), BPLM (Benishagul People’s Liberation Movement), BPRDO (Bench People’s Revolutionary Democratic Organization), DPDO (Dawro People’s Democratic Organization), DPDO (Dizi People’s Democratic Organization), EPRDF (Ethiopian People’s Revolutionary Democratic Front), ESDL (Ethiopian Somali Democratic League), GDU (Gamo Democratic Union), GGPDO (Gamo and Gofa People’s Democratic Organization), GPLF (Gambella People’s Liberation Party), GPLM (Gumuz People’s Liberation Movement), GPRDM (Gurage People’s Revolutionary Democratic Movement), GPRDO (Gedio People’s Revolutionary Democratic Organization), HNL (Harrari National League), HPDO (Hadiya People’s Democratic Organization), KNDM (Kebena National Democratic Movement), KPDO (Kembata People’s Democratic Organization), KPRDO (Keficho People’s Revolutionary Democratic Organization), KPRDO (Konso People’s Revolutionary Democratic Organization), KPRDO (Kore People’s Revolutionary Democratic Organization), MPDM (Mareko People’s Democratic Movement), MPRDO (Meane People’s Revolutionary Democratic Organization), SAMWGPDM (Silte, Azernet Berberie, Aletto Werero, Meskan Melga, Wolene Gedebano People’s Democratic Movement), SOPDO (South Omo Peoples’ Democratic Organization), SPDM (Shekicho People’s Democratic Movement), SPDO (Sidama People’s Democratic Organization), TPDO (Tembaro People’s Democratic Organization), WPDO (Wolayita People’s Democratic Organization), WSDP (Western Somali Democratic Party), and YPDF (Yem People’s Democratic Front).

organizational centralization, and "control of the agenda and rules of competition" were important to push "the transition around new ethnically defined regions, a constitution that emphasized self-determination, and a series of largely uncontested elections." The ethno-linguistic territorial organization of Ethiopia under Proclamation 7/1992 was reinforcing the ethnic aspirations and principle of the Transitional Charter to make the adoption of the ethnic federal constitutional design inevitable. Lyons (Ibid) made an additional explanation that the delineation of the regional administrations, based on Proclamation 7/1992, along with ethno-linguistic identities and the subsequent elections in 1992 and 1994 under constituencies organized within the regional administrations were encouraging ethnic divisions to harden. That set the stage for the adoption of the *revolutionary* ethnic federalism. The process ended with the *de jure* endorsement of the ethnic federal constitutional proposal in 1994.

4. Findings

The EPRDF's monopoly, almost so, in the steps of the constitutional writing process is often implicated in the legitimacy gap of the ethnic federal design, to transform from a higher law to our law. The reasons are made in terms of top-down exclusive federal choice, procedurally, and constitutional politicization, substantively.

4.1. Top-down and exclusive federal constitutional design

The missing of multiparty deliberation in the constitutional making process affected the legitimacy of the federal constitutional system by impeding the contributions of alternative ethnic, cross-ethnic and/or multi-ethnic parties outside EPRDF to engage in *serious* and inclusive constitutional dialogues. During inter-ethnic negotiations, the disengagements of the relatively effective and popular ethnic political parties such as OLF and AAPO from the making of the Constitution could go to the extent that the ethnic federal choice was not as much the self-made of ethnic groups as it claims. There were some criticisms of OLF related to democratization and showing moderation to alternative political choices, considering itself as the only representative for the Oromo and threatening the wellbeing of ethnic minorities, in the Oromia Region (Lyons, 1996). Despite that, if OLF had participated in the constitutional designing process, it would have expanded the legitimacy of the federal constitutional order since Merrera (2003) argued that the makers of the Federal Constitution "... lack a popular mandate in the eyes of the Oromo people". Similarly, Cohen (1995, p. 155) pointed out, "All Amhara People's Organization (AAPO), a growing opposition party, withdrew from the election process, substantially reducing Amhara participation."

The electoral non-participation of OLF and AAPO, since 1992, had erased the possibilities of alternative federal articulations, provided that they make up not less than two-thirds of the Ethiopian population and, like so many other ethnic groups, they did not consider their co-ethnic parties in EPRDF had the credibility of representativeness to undertake a legitimate federal constitutional negotiation (Hovde, 1994). Although the

federal constitutional arrangement, in the Preamble and Article 39, recognizes the right of self-determination for “nations, nationalities and peoples”, it has a compromised *original legitimacy*. Vaughan (2003) claimed “many educated Oromo were also angered at OLF's decision to withdraw from the government – a disappointment which has left many feeling unrepresented and excluded.”

Furthermore, the legitimacy of the federal constitutional dispensation has come under criticism due to the upper-hand roles of ethnic parties, in which EPRDF was at the forefront in the making of the Federal Constitution. It entails the exclusion of multi-ethnic and/or cross-ethnic parties from delivering a federal constitutional order that could strike the equilibrium between ethnic diversity and unity. That reflected the history of the change of power balance between ethno-nationalists and the unionists with the shattering of the apparatus of the ancient regime (Transitional Charter, Preamble) which was a fait accompli for ethnic parties to rein, uncompromisingly, the course of the constitutional writing. Alemante (2015) stated that the Federal Constitution was the handicraft of “leaders of self-styled liberation movements during a period of extreme weakness of the Ethiopian state and in the absence of countervailing forces that could champion, or speak for, Ethiopian unity and sovereignty.”

Besides, the political interest of EPRDF was indicated in changing the power balance towards the ascendance of ethnic forces in directing the federal designing process towards ethnic self-determination. It was significant to crowd out cross-ethnic parties, like the Coalition of Ethiopian Democratic Forces (COEDF) and Council of Alternative Forces for Peace and Democracy (CAFPD), from the formal processes of constitutional making. EPRDF exploited the Marxist-Leninist practice of forging discrete, yet centralized, political parties across ethnic groups. For TPLF, asserting central hegemony had conflicted with its ethnic base (Aaron, 2002). As a solution, it already had at hand revolutionary-democracy through which it would form an umbrella organization, EPRDF, to bring in various ethnic groups (Turton, 2005). This contributed to the overwhelming proliferation of ethnic political parties as a way of transforming the military victory of the EPRDF into political dominance. Aaron (2002) pointed out that the process of democratization based on ethnicity “had unleashed the energies of ethnic elites, within and outside [Ethiopia]” to restructure the state and control “material and social resources”.

Therefore, the designing of the ethnic federal system under the auspice of EPRDF echoed the interests of ethnic elites to exclusively write “their own vision” of the Ethiopian state and to control political power and resources (Ehrlich, 1999). It blocked the possibility of constitutional bargains between the forces of ethnic-centrifugalism and centripetalism that perspired the condition of a top-down and exclusive federal constitutional choice. Given the nature of party-centralization and power asymmetry in EPRDF and its relations with affiliate ethnic parties, open and serious negotiations were lacking to assume meaningful political bargains in designing the federal

system. The upper-hand roles of the ranks of EPRDF in the constitutional making process and bodies, accompanied by the withdrawals and non-participations of ethnic parties not aligned with EPRDF, induced the top-down origin of the federal arrangement. The theme that EPRDF in a self-serving manner imposed the ethnic federal arrangement rejects the relevance of such pluralistic federations as Belgium and Switzerland to Ethiopia (EDP, 2009).

4.2. Politicized federal constitutional design

There are claims that the upper hand position of EPRDF, as a champion of the rights of ethnic self-determination, in the transitional period was important in delivering a federal constitutional option which has addressed the question of nationalities, which has, according to Bahru (2014), dominated the course of Ethiopian politics since the early 1960s. Ali Mazrui (quoted in Breitzke, 1995) indicated, “Ethiopia had already disintegrated when ethnic groups began plausibly to demand self-determination from Mengistu's regime... the key question is whether Ethiopia should, like the Soviet Union, create a Commonwealth of Independent States.” The federal system has been touted as the most desirable and practical choice left for the stability and continuity of the Ethiopian state through settling the historical grievances of ethnic inequality as well as the violent disintegration of Ethiopia (EPRDF, Program, 2006). That is why EPRDF, further explaining the inextricable interdependence among ethnic group rights, economic growth and stability, had the conviction that the ethnic formula of the federal system has the political legitimacy of guaranteeing sustainable development and security (Meles Zenawi Leadership Academy, 2017).

Gebbru (2014) confirmed that the federal system and the program of EPRDF were impossible to tell apart. They converged at least on five basic points: the dispersal of sovereignty among ethnic groups, the right of ethnic groups to self-determination up to and including secession, the consensual origin of the federal system among ethnic groups, the ethnic inequality origin of the federal system, and on building a common economic and political community (Federal Constitution, 1994, and EPRDF Program, 2006). This level of convergence establishes the premise that the designing process of the Federal Constitution was openly enabling EPRDF to set the substance of the ethnic federal order with the political program of its revolutionary-democracy. Consequently, the following two ideological viewpoints concern the political legitimacy of the federal order.

The first is the concern that the ethnic federal arrangement embodies the Marxist-Leninist theory of nationality, as the ideological essence of EPRDF's revolutionary-democracy (Alem, 2004). In this theory, the quintessence of oppressive interactions among nationalities and the predetermined nature of ethnic/or national identities and the right of self-determination have the effects of deepening ethnic political cleavages and suppress the values of individual freedoms and democratic rights (EDP, 2003). Illuminating the level of the ideological drive of the ethnic federal structure, regardless of the wave of liberal democracy in Africa and the decline of Marxism-

Leninism, “Samuel Huntington argues that a drawing of state boundaries on ethnic lines in Ethiopia ‘supplements what is unavoidable with what is undesirable’”, Brietzke (1995). Alemante (2015) observed that in the current ethnic federal organization, “[c]itizens who might not have been aware of their ethnicity will regroup under its banners purporting to be a different people.” That forces everyone and every territory to belong exclusively to a certain ethnic group. That, rendering individual rights and democratic citizenship subjected to the ethnic structure of self-determination, expands the rift of ethnic cleavages to brew conflicts related not only to regional ethnic minorities but also to territorial disputes where there are no ethno-territorial sharp distinctions.

Furthermore, the constitutional interpretation authority of the House of the Federation (HoF), composed of *sovereign* ethnic groups (FDRE Constitution, Art. 8), is familiar in the institutional design of Marxism-Leninism which vests the power of constitutional review not in the judiciary but in the congress of autonomous entities under the auspice of the vanguard communist party. The Presidium of the Soviets had the power of constitutional interpretation (Alemante, 2015). It was under the command of the Communist Party to restrain the government from infringing on individual rights and the federal constitutional order of the USSR. Along the same line, it is questionable how the composition of the HoF could allow it to effectively exercise its constitutional interpretation mandate in the direction of entrenching the value of constitutionalism. Given the floundering of multiparty democracy in Ethiopia, the representatives of ethnic groups in the House are more likely to be elected from or assigned by a dominant party. More often than not it was the partisan function of the EPRDF-dominated HoF which accounted for the ineffectiveness of the system of constitutional review and adjudication to protect the constitutional systems of individual and ethnic-based group rights.

Coming to the second ideological concern, the focus on the inclusion of the right to secession was also fashioned with the Marxist-Leninist theory of nationality. According to Alemante (1992), the Chairman of the Council of Representatives and EPRDF, and the President of the Transitional Government of Ethiopia) said, “citizens have the right to freely associate...What is the reason that we do not do the same on the right to form an independent state [sic]? In the former Soviet Union, they did have this right written in the Constitution.” The claim that the right to secession has the dialectical advantage of consolidating the unity of ethnic groups and the stability of Ethiopia faces the opposition that it, rather, backfires on the values of peace, unity and sovereignty. The scale and frequency of ethnic conflicts since the embankment of the federal system in conjunction with the experiences of terminal conflicts in the failed communist federations such as Yugoslavia, which had the same constitutional right of secession, made the empirical and historical reasoning doubtful in the political legitimacy of the Ethiopian federal design.

5. Conclusion

Constitutional negotiations and bargains are inherent to the *covenantal* notion of federalism which is vital to the *original legitimacy* of federal constitutions. In designing multi-ethnic and multi-national federal constitutional arrangements, multiparty constitutional deliberations induce meaningful and broad-based constitutional bargains and negotiations dealing with the varied and often competing interests of ethnic and national groups. It reveals that, compared to the experiences of federal constitutional impositions and politicizations in defunct and fragile federations, the background of multiparty constitution-makings in mature multi-ethnic and multi-national federations similar to Switzerland, Spain, Canada, and Belgium saw the seed of federal covenant. Most importantly, in post-conflict federal constitutional makings, multiparty constitutional writing contains the influences of the power imbalance, resulting from the conflict, from dictating the terms of the constitution-making and then the substance of the new federal constitutions. It is a matter of developing a pluralistic federal constitutional formula with a pluralistic method rather than succumbing to the interest of the *victor*.

In the Ethiopian case, the complete ceasing of the political and legal institutions of the *ancien regime*, *Derge*, complemented with the marginalization and withdrawals of contending political parties, was quite enabling for EPRDF to anchor its military triumph with political and institutional dominance. When the Constitution was ratified in 1994, the condition of democracy was worse than what it had been in 1991 (Ottaway, 1995). It provided for the dominance of EPRDF in the making of the Federal Constitution while circumventing the possibility of crafting a federal system through multiparty participation and negotiations.

EPRDF went unchallenged in influencing the compositions, structures and activities of the Constitutional Drafting Commission (CDC), the Council of Representatives (CoRs), the forums of public constitutional discussions, and the Constituent Assembly. Dominating the constitution-making while, according to Lyons (1996) "creating facts on the ground, such as new regional administrations and parties, that encouraged groups and institutions with an interest in defending the status quo" at the same time was the strategy of EPRDF to advance the constitutionalization of its version of a federal system. That has given rise to the continuous nature of the *covenantal original legitimacy* of the ethnic federal order on the grounds of constitutional impositions and a politicized federal constitutional choice.

In the making stages of the Federal Constitution, the deficit of multiparty participation blocked the possibility of federal constitutional deliberations among ethnic, ideological and multi-ethnic parties, outside EPRDF and its affiliate parties. That worked against the opportunity to undertake political bargains and negotiations involving local, regional, ethnic and national interests and writing a durable multi-ethnic federal constitutional design. What is more, the long dominance of EPRDF has compromised the legitimacy of the ethnic federal

constitutional design to be politicized, in terms of content, with its Marxist-Leninist-inspired revolutionary-democracy. For that reason, criticisms of the political program of EPRDF usually made in terms of *illiberalism*, instability, ethnic fragmentation and ethnic-based violence and conflicts, and on the experiences of federations structured with the Marxist-Leninist strand of self-determination squarely fall on the merits of the federal system in point. As a recommendation, redeeming the legitimacy crisis of the ethnic federal system requires dealing with the very serious flaws of multiparty democratization in Ethiopia. Multiparty constitutional deliberations and negotiations have the potential to re-balance the ethnic federal order towards a mutually advantageous and dynamic constitutional setup. In that regard, there have been serious setbacks associated with the politics of party hegemony under EPRDF-cum-Prosperity Party (PP).

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